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STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

Health Occupations Prosecution and Litigation Division

FAX No.
410-333-7467

WRITER'S DIRECT DIAL No.
410-767-5666

May 13, 2013

The Honorable J. Frederick Motz
101 West Lombard Street
Baltimore, Maryland 21201

**Re: Phillip Michael Scott v. Department of Corrections
Civil No. JFM-09-3328**

Dear Judge Motz,

Thank you for your letter of May 6, 2013 asking whether a discovery dispute exists between the parties. Unfortunately, the answer is a tentative "yes," although the discovery deadline is May 20, 2013, a mere week from now. Undersigned counsel has made many attempts over the past several months to try to assist opposing counsel in the scheduling of depositions for all witnesses involved in this case and has made deposition scheduling arrangements with the litigation coordinators at both Maryland Correctional Training Center (where the defendants are employed) and North Branch Correctional Institution (where Mr. Scott is housed), only to result in last-minute cancellations and/or no response from opposing counsel. (Please see Document 100 and the exhibits attached thereto demonstrating those attempts, entitled Response to Plaintiff's Motion for Reconsideration and Motion to Compel Discovery filed on February 21, 2013). For obvious reasons, prison staff needs specific information and firm dates in order to accommodate the logistical and staffing concerns that arise when visitors enter the prisons.

On February 28, 2013, the parties agreed to file a Second Consent Motion to Amend Scheduling Order, in hopes of resolving this issue without the Court's intervention. This Motion was granted and a paperless Order entered on March 18, 2013. In a further effort to advance this case, undersigned counsel registered no objection to Mr. Scott's request for additional time for the depositions he wishes to conduct. Since February 28, 2013, undersigned counsel has made numerous good faith attempts to persuade opposing counsel to provide specific details for the scheduling of these depositions, including providing contact information for the prisons' litigation coordinators. (See attached email chains and correspondence dated February 28, 2013; March 8, 2013; April 25, 2013; May 7, 2013; May 10, 2013; and May 13, 2013.)

Unfortunately, Defendant correctional officers are not able to travel to Baltimore, as requested by opposing counsel, due to budget constraints and the fact that several of them simply cannot be expected to sit around waiting for their deposition to occur because it would severely impact staffing at the prison and cause unnecessary and undue hardship on their part. However, opposing counsel has yet to specify with detail which witnesses he would like to depose at which times and on which dates. While none of us can predict the exact amount of time each deposition will take, a reasonable estimate is necessary in order to properly coordinate scheduling and prison staffing.

Also, opposing counsel continues to refuse to allow Defendants to depose Mr. Scott before the depositions of the officers take place. This has made it impossible for Defendants to schedule the deposition of Mr. Scott, particularly before the May 20th deadline.

Defendants are willing, as they were in the past, to amend the scheduling order to accommodate opposing counsel's schedule if that would help resolve this issue. To date, opposing counsel has not responded to this offer; however, I am hopeful that we can agree to submit one by the end of the week which will include firm deposition dates.

Sincerely,



Francesca Gibbs

Enclosures

cc: Laurence Marder, Esq. (via electronic filing and first-class mail)
Stephanie Lane-Weber, Assistant Attorney General (via first-class mail)



MARYLAND

Francesca Gibbs -DHMH- <francesca.gibbs@maryland.gov>

Re: Scott v. DOC

1 message

Francesca Gibbs -DHMH- <francesca.gibbs@maryland.gov>

To: Laurence Marder <marder@scbmalaw.com>

Thu, Feb 28, 2013 at 2:01 PM

That's not an accurate assumption, but if you want to go forward with all of the depositions, I guess that's what we'll do. I still think it makes no sense to take all of yours before you allow me to take Mr. Scott's, but nonetheless, I'll look forward to receiving your dates on Monday. I'll file the Motion and Proposed Order ASAP. Thanks.

On Thu, Feb 28, 2013 at 1:40 PM, Laurence Marder <marder@scbmalaw.com> wrote:

I approve the proposed order .

I can only assume you need a further factual predicate for your legal position on exhaustion. If I am wrong please file it.

Do you want to depose him just on that ground? We may be able to do it by phone. Otherwise , I feel I am obligated to stick to the order we have agreed to.

Can you stipulate to extending depo hours for the plaintiff ? given the number of relevant witnesses, I was hoping we could agree on at least that .

I am on the receiving end of yet another rambling phone depo, but will send over dates on or before Monday(I am close to settling a case that will free up time).

You may sign my name to the motion .

Thanks,

Larry

Laurence A. Marder, Esquire

Salsbury, Clements, Bekman

Marder & Adkins, LLC

300 W. Pratt Street, Suite 450

Baltimore, Maryland 21201

Tel. (410) 539-6633

Fax (410) 625-9554

Hi Larry,

Attached please find another motion to amend the scheduling order in this case (as referenced in my email to Ms. Claypoole). I provided for a nearly 60 day extension of everything given the fact that you intend to ask for more deposition time. Also, I provided a great deal of time between the settlement conference date and the dispositive motions deadline simply because that is the time period I anticipate being out on maternity leave. (I'd really like to have the settlement conference occur before then.) If you think it's necessary I inform the court, I will, but I'd rather just state that we agreed upon these deadlines. I'm not certain yet that I'd like to file a dispositive motion at this time, so I have not referenced it in the motion. I think doing so would probably be more appropriate after Mr. Scott is deposed, and obviously the sooner that can be accomplished (especially if it happens prior to you deposing everyone else), the sooner I can file it...Can you please provide some tentative dates for ALL of the depositions considering your schedule appears to be more inflexible than mine at the moment? Also, if you intend for Gary Grissom to be a witness, can you please provide his contact information so that we may schedule a deposition of him as well?

Best regards,

--
Francesca Gibbs

Assistant Attorney General
Health Occupations Prosecution and Litigation Division
300 West Preston Street, Suite 210
Baltimore, Maryland 21201
Phone: 410.767.1875
Fax: 410.333.7467

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MARYLAND

Francesca Gibbs -DHMH- <francesca.gibbs@maryland.gov>

Re: Scott v. DOC

1 message

Francesca Gibbs -DHMH- <francesca.gibbs@maryland.gov>

To: Laurence Marder <marder@scbmalaw.com>

Bcc: "Vann, Mary" <mevann@dpscs.state.md.us>, Monica Baker <monica.baker@maryland.gov>

Fri, Mar 8, 2013 at 6:31 PM

Larry,

You never responded to my email about which officers you'd like to depose when...I've been informed by the litigation coordinator at MCTC that due to budget constraints, they cannot afford to send the officers to Baltimore for depositions. Please advise by Monday if you would like to hold any depos on 3/20, including the names of the officers and the times you would like them to be scheduled.

Best regards,
Francesca

On Thu, Mar 7, 2013 at 1:00 PM, Laurence Marder <marder@scbmalaw.com> wrote:

Any chance we can bring the officers to your office in Baltimore?

If so , then I am open on the following: 3/18 or 20.

Laurence A. Marder, Esquire

Salsbury, Clements, Bekman

Marder & Adkins, LLC

300 W. Pratt Street, Suite 450

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From: Francesca Gibbs -DHMH- [mailto:francesca.gibbs@maryland.gov]

Sent: Wednesday, March 06, 2013 9:35 AM

To: Laurence Marder

Subject: Re: Scott v. DOC

I'll hold you to it :) I'd like to get this case moving.

On Wed, Mar 6, 2013 at 9:29 AM, Laurence Marder <marder@scbmalaw.com> wrote:

Thanks

Sent from my iPhone

On Mar 4, 2013, at 2:28 PM, "Francesca Gibbs -DHMH-" <francesca.gibbs@maryland.gov> wrote:

Dear Larry,

As you promised, please provide me with dates and times upon which you would like to depose witnesses in this case and when you propose that I may depose Mr. Scott.

Many thanks,

--

Francesca Gibbs

Assistant Attorney General

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OFFICE OF THE ATTORNEY GENERAL

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WRITER'S DIRECT DIAL NO.

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ROBERT J. GILBERT
Deputy Counsel
Assistant Attorney General

April 25, 2013

Laurence A. Marder, Esq.
Salsbury, Clements, Bekman
Marder & Adkins, LLC
300 W. Pratt Street, Suite 450
Baltimore, Maryland 21201

COPY

Re: *Scott v. Division of Correction*
Case No. JFM-09-3328

Dear Mr. Marder,

As you know, the discovery deadline in this case has been moved to May 20, 2013, and you were granted additional time to depose witnesses. This deadline is less than one month away, and unfortunately, I have not heard back from you regarding a possible deposition schedule. I last emailed on March 8, 2013 to ask which officers you would like to depose, at approximately what times and on which dates, but I never received a response. On several occasions I have made arrangements with the litigation coordinators at MCTC and NBCI in order to arrange depositions of everyone for you, but to no avail. I am sure you can understand that this causes frustration and inconvenience, particularly for the officers, who are eager to put this case behind them.

I strongly urge you to contact the litigation coordinators directly (and copy me) so that we may proceed as soon as practicable. Mary Vann is the litigation coordinator at MCTC (MEVann@dpscs.state.md.us), and Randy Durst is the litigation coordinator at NBCI (EDurst@dpscs.state.md.us). The dates I am currently available (although I am unsure of my co-counsel's schedule) are as follows: May 8, May 9, May 13, May 16 and May 17. If none of these dates will work for you, please draft a motion to amend the scheduling order and provide me with deposition dates that are amenable to your schedule.

I agreed in good faith to hold off on deposing your client until after you depose the officers, but if I do not hear from you by the end of this month either with dates or a proposed amended scheduling order, I will be forced to file another Motion for leave to depose him so that

Re: *Scott v. Division of Correction*
Case No. JFM-09-3328
April 25, 2013

I can ensure it happens before May 20, 2013. If you think a conference call with the Judge would assist us in completing discovery in a timely manner, please advise, and we can schedule a call.

Lastly, as you know from my recent correspondence to Judge Gauvey, I am uncertain that I will be able to attend the scheduled settlement conference in this matter on July 5, 2013. To assist co-counsel in resolving this matter (if necessary), it would be helpful if you could submit your demand letter as soon as possible. You have made several references in the past to the State making an offer, but I cannot consider doing so until I receive a demand letter from your client.

Thanks for your prompt attention to this matter, and I look forward to hearing from you soon.

Very truly yours,



Francesca Gibbs

cc: Mary Vann, Litigation Coordinator, MCTC
Eldred R. Durst, Litigation Coordinator, NBCI
Stephanie Lane-Weber, Assistant Attorney General



Francesca Gibbs -DHMH- <francesca.gibbs@maryland.gov>

Re: scott

1 message

Francesca Gibbs -DHMH- <francesca.gibbs@maryland.gov>

To: Laurence Marder <marder@scbmalaw.com>

Cc: Stephanie Lane-Weber <slaneweber@oag.state.md.us>

Bcc: Christopher Gozdor <christopher.gozdor@maryland.gov>

Tue, May 7, 2013 at 12:54 PM

First, please try to maintain a professional level of dialogue. Second, as Ms. Vann and I have previously advised you, travel for the purpose of the depositions is impossible for these officers, particularly when you are unwilling to provide definite times, dates or names of who you would like to depose when. The rules call for reasonable notice of the time, place, and method of deposition. A week's notice without any details does not meet that requirement, in my opinion, and yet I am still trying to be accommodating. Third, I have been trying to assist you with this process for many months, but unfortunately you have been unable or unwilling to meet me half way. If we can not resolve this by the end of the week, I'll have no choice but to respond to Judge Motz's letter that we do indeed have a discovery dispute.

On Tue, May 7, 2013 at 12:41 PM, Laurence Marder <marder@scbmalaw.com> wrote:
Who do you think you are?

Sent from my iPhone

On May 7, 2013, at 12:02 PM, "Francesca Gibbs -DHMH-" <francesca.gibbs@maryland.gov> wrote:

We never agreed to videotaped depositions, so I'm not willing to entertain that possibility at the 11th hour. Please follow-up with Ms. Vann as previously advised.

On Mon, May 6, 2013 at 1:45 PM, Laurence Marder <marder@scbmalaw.com> wrote:

I am open on may 16 and may 17.

I would like to know if travel is possible to a court reporters office for video dep.

Laurence A. Marder, Esquire

Salsbury, Clements, Bekman

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MARYLAND

Francesca Gibbs -DHMH- <francesca.gibbs@maryland.gov>

Re: scott

1 message

Francesca Gibbs -DHMH- <francesca.gibbs@maryland.gov>

To: marder@scbmalaw.com

Cc: MEVann@dpsc.state.md.us, edurst@dpsc.state.md.us

Fri, May 10, 2013 at 1:43 PM

Thanks for your email. At this point, it appears we'll need to amend the scheduling order anyway to avoid missing the 5/20 discovery deadline, don't you think? I'm out of the office today, but could you send over a draft early next week?

Best regards,

Francesca

From: Laurence Marder [mailto:marder@scbmalaw.com]

Sent: Friday, May 10, 2013 01:30 PM

To: 'Francesca Gibbs -DHMH-' <francesca.gibbs@maryland.gov>

Subject: RE: scott

I am trying to settle my case for june . I will know late today or Monday.

If it settles my calendar will permit travel to Hagerstown, on numerous dates.

I will call or write as soon as I know my case is resolved. I am optimistic.

Laurence A. Marder, Esquire

Salsbury, Clements, Bekman

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From: Francesca Gibbs -DHMH- [mailto:francesca.gibbs@maryland.gov]

Sent: Tuesday, May 07, 2013 12:03 PM

To: Laurence Marder

Cc: mevann@dpsc.state.md.us; edurst@dpsc.state.md.us; [Stephanie Lane-Weber](mailto:Stephanie.Lane-Weber@maryland.gov)

Subject: Re: scott

Case 1:09-cv-03328-JFM Document 112 Filed 05/13/13 Page 13 of 15
We never agreed to videotaped depositions, so I'm not willing to entertain that possibility at the 11th hour.
Please follow-up with Ms. Vann as previously advised.

On Mon, May 6, 2013 at 1:45 PM, Laurence Marder <marder@scbmalaw.com> wrote:

I am open on may 16 and may 17.

I would like to know if travel is possible to a court reporters office for video dep.

Laurence A. Marder, Esquire

Salsbury, Clements, Bekman

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MARYLAND

Francesca Gibbs -DHMH- <francesca.gibbs@maryland.gov>

Re: scott

1 message

Francesca Gibbs -DHMH- <francesca.gibbs@maryland.gov>

To: Laurence Marder <marder@scbmalaw.com>

Cc: "Vann, Mary" <mevann@dpscs.state.md.us>, "Eldred R. 'Durst" <edurst@dpscs.state.md.us>, Stephanie Lane-Weber <slaneweber@oag.state.md.us>

Mon, May 13, 2013 at 2:54 PM

Good to hear. However, I will still need specifics, and you will still need to contact the litigation coordinators to see if the specific officers you would like to depose are available on a given day. Unfortunately, the only one of these dates I'm available is June 6. Can you please provide more, to include a date on which I may depose your client? I am replying to Judge Motz's recent letter regarding whether we have a discovery dispute and will advise that we will likely be filing another Consent Motion to Amend the Scheduling Order. Will you please draft it this time and include the dates we agree upon for depositions in the Proposed Order? Otherwise, perhaps we can schedule a conference call with him to resolve this once and for all?

Many thanks,
Francesca

On Mon, May 13, 2013 at 2:05 PM, Laurence Marder <marder@scbmalaw.com> wrote:

My case settled.

I offer the following :

May 21-24

May 29

June 3

June 6

Laurence A. Marder, Esquire
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